IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EMMETT W. CALDWELL,)	
Plaintiff,)	
v.)	1:08CV628
FEDERAL BUREAU OF)	
INVESTIGATION, JUSTICE)	
DEPARTMENT and DRUG)	
ENFORCEMENT AGENCY,)	
)	
Defendants.)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On September 2, 2008, Emmett W. Caldwell filed a civil action in this Court and requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). As Defendants, *pro se* Plaintiff Caldwell named the Federal Bureau of Investigation, the Department of Justice, and the Drug Enforcement Agency.

In *Neitzke v. Williams*, 490 U.S. 319 (1989), the United States Supreme Court held that a district court may dismiss the complaint of a *pro se* litigant under 28 U.S.C. § 1915(e)(2)(B) when the complaint lacks "an arguable basis either in law or in fact." *Id.* at 325. *Neitzke* explained that "[§ 1915(e)(2)(B)] accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.* at 327. Additionally, under *Denton v*.

Hernandez, 504 U.S. 25, 32-33 (1992), a court may dismiss as frivolous in forma pauperis complaints whose factual allegations are fanciful, fantastic, delusional, irrational, or wholly incredible, but not those which are simply unlikely.

The Court concludes that Plaintiff Caldwell's complaint is subject to dismissal under *Neitzke* and *Denton*. Caldwell is one of the most litigious *pro se* plaintiffs this Court has ever encountered. He has filed over 128 cases in the state and federal courts since 1988, more than 25 in this court alone. *See Caldwell v. Triangle Transit Authority*, No. 1:08CV10 (M.D.N.C. Recommendation of United States Magistrate Judge, Aug. 22, 2008). He is a prolific litigator whose complaints have repeatedly been dismissed by this Court as frivolous.

Plaintiff's claims in this action are fanciful, delusional, and irrational. He opens his complaint with the allegation that he and his 89-year-old mother are the victims of a vendetta by "crooked Durham County sheriffs and detectives as well as Chapel Hill Police and their Mexican & Black drug gang coconspirators." From there, the complaint continues with allegations that federal officials are colluding with street gangs to harass and target Plaintiff and his mother. His allegations continue in bizarre fashion, and conclude with claims of a RICO conspiracy by the federal defendants. Plaintiff's diatribe is precisely the kind of frivolous complaint that is subject to dismissal under *Neitzke*.

For these reasons, **IT IS RECOMMENDED** that *in forma pauperis* status be granted and that Plaintiff's complaint be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B).

This the 18th day of Nove	ember, 2008.
_	/s/ P. Trevor Sharp
	United States Magistrate Judge